

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ADAM FILBY,

NO. 2:15-cv-794

Plaintiff,

**COMPLAINT FOR
DISCRIMINATION AND
RETALIATION**

v.

EQUILON ENTERPRISES LLC dba
SHELL OIL PRODUCTS US, a Delaware
Corporation, and its parents, subsidiaries,
successors, affiliates and assigns,

Defendants.

COMES NOW, the Plaintiff, ADAM FILBY by and through his attorney and by way
of cause of action against the Defendants complains and alleges as follows:

I. PARTIES

1.1 Plaintiff ADAM FILBY at all time material hereto was a resident of Skagit
County, Washington.

1 1.2 Defendant EQUILON ENTERPRISES LLC (DBA SHELL OIL PRODUCTS
2 US is a Delaware corporation.

3 4 **II. JURISDICTION AND VENUE**

5 2.1 Plaintiff hereby incorporates and re-alleges all allegations as previously
6 stated.

7 2.2 Venue and Jurisdiction of this action are proper in this Court in that events
8 giving rise to the complaints occurred in the Western District of Washington, the Plaintiff's
9 claims arise under federal law, and the damages alleged exceed \$75,000.

10 2.3 Plaintiff alleges federal claims against the Defendants under Title VII of the
11 Civil Rights Act of 1964 as amended 42 USC 2000e, *et seq.*

12 2.4 Plaintiff alleges state law claims against the Defendants pursuant to RCW
13 49.60 *et seq.* (Washington Law Against Discrimination).

14 2.5 Plaintiff filed a timely complaint with the US Equal Employment Opportunity
15 Commission (EEOC) and received a Notice of Right to Sue as a prerequisite to
16 commencement of a lawsuit alleging Title VII violations. This action was commenced
17 within the time period required under federal civil rights law.

18 **III. FACTUAL ALLEGATIONS**

19 3.1 Plaintiff hereby incorporates and re-alleges all allegations as previously
20 stated.

21 3.2 Mr. Filby is an individual with a disability. He suffers from PTSD and
22 Depression related to his service in the US Military. He is an honorably discharged
23 combat veteran. Mr. Filby disclosed his Veteran status to Defendant Shell Oil at the time
24 he applied for employment.

1 3.3 Mr. Filby worked for Shell for approximately 19 years. He received
2 numerous promotions during the course of his employment and had excellent
3 performance evaluations. His position at the time of his termination was as the Business
4 Improvement Coordinator at the Puget Sound Refinery, at an annual salary of \$143,000
5 plus a substantial performance bonus and pension and health benefits.

6 3.4 During his tenure at Shell, Mr. Filby worked with the human resources to
7 help improve the Company's veteran recruiting outreach efforts. His most recent effort
8 was the launching of the Puget Sound Refinery Military Network (MILNET). His efforts in
9 this area received high praise and approval from then General Manager, Tom Rizzo.

10 3.5 In 2015, Ms. Ada Cuadrado became Mr. Filby's supervisor. Ms. Cuadrado
11 told Mr. Filby that she was new to this position and was not familiar with the work. She
12 further stated that she had just arrived at the Puget Sound Refinery and did not know
13 what Mr. Filby did because she was the Process Engineering Manager in her prior role
14 and was not exposed to the type of work performed by Mr. Filby.

15 3.6 At one point, Ms. Cuadrado and Mr. Filby discussed his veteran status and
16 the fact that he suffers from depression and PTSD as a result of his military service. Ms.
17 Cuadrado indicated that her father was a veteran and that he suffered similar symptoms.

18 3.7 After six months as Mr. Filby's manager, Ms. Cuadrado gave Mr. Filby a
19 poor performance evaluation that was inconsistent with his prior evaluations.

20 3.8 Mr. Filby attempted to discuss the performance evaluation with Mr.
21 Cuadrado, but she did not listen to him and told him to find a new position.

22 3.9 Mr. Filby then went to human resources and conveyed his concerns about
23 the performance evaluation to Human Resource Manager, Mr. Robin Yates.

24 3.10 After Ms. Cuadrado became aware that Mr. Filby had complained to Human
25 Resources about the performance evaluation, she began making critical and
26

1 discriminatory remarks to Mr. Filby. She told him that he was a “Schitzo” and that the
2 whole leadership team felt the same way about him.

3 3.11 After this, Mr. Filby began to experience hostility in the work environment.
4 People stopped communicating with him as they had before. His workload was reduced,
5 and he was removed from numerous projects and jobs. He was also reassigned to a lower
6 reporting level.

7 3.12 Mr. Filby tried his best to remain productive but the negative treatment at
8 work began to have a negative impact on his health and triggered some of his underlying
9 depression and PTSD, related to his military service. He reported these negative health
10 effects to Mr. Yates from Human Resources on several occasions, and requested a
11 transfer to a different department or job site. His requests for a transfer were ignored.

12 3.13 The Company claimed that the position of Business Improvement
13 Coordinator was downgraded and redesigned to focus more on the goals of Technical
14 Assurance department. The Company also stated that the position would need to be
15 performed by someone with a background that was more suitable for the new
16 downgraded position. In fact, the Company appointed Mr. Dan Peek to this position. Mr.
17 Peek held the same job grade (SG 3) that Mr. Filby held at the time of his appointment.

18 3.14 Shell has a Positive Performance Program (“PPP”) designed to help
19 employees meet performance expectations. This program includes a process of
20 progressive discipline. Mr. Filby considered the PPP to be an important part of his
21 employment arrangement with Shell. Shell never used the PPP with Mr. Filby.

22 3.15 On August 24, 2016, Mr. Filby filed a charge of discrimination with the
23 EEOC. On or about September 1, 2016 Shell was notified of the EEOC charge.

24 3.16 On September 14, 2016 Shell notified Mr. Filby that his employment was
25 being terminated effective November 30, 2016.

IV. FIRST CAUSE OF ACTION: DISABILITY DISCRIMINATION, UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED 42 USC 2000e, ET SEQ. AND THE AMERICANS WITH DISABILITIES ACT 42 USC 12132, ET SEQ.

4.1 Plaintiff hereby incorporates and re-alleges all allegations as previously stated.

4.2 Defendants knew or should have known that Plaintiff suffers from a disability related to his military service including but not limited to depression and PTSD.

4.3 Plaintiff's supervisor discriminated against him in assessing his performance based on her biases, prejudices and feelings about his disabilities related to his military service including but not limited to depression and PTSD.

4.4 Defendants discriminated against the Plaintiff by creating a hostile work environment based on biases, prejudices and feelings about his disabilities related to his military service including but not limited to depression and PTSD.

4.5 They also took tangible employment actions, including modification of the plaintiff's duties as set forth above related to his military service including but not limited to depression and PTSD.

4.6 Defendants failed to engage in the interactive process required by the American's with Disabilities Act and failed to provide the reasonable accommodations requested by the plaintiff.

4.7 Defendant's acts and omissions constitute disability discrimination under Title VII of the Civil Rights Act of 1964 as amended, and under other federal statutes, regulations and case law.

4.8 As a direct and proximate result of Defendants' disability discrimination Plaintiff has suffered damages in an amount to be proven at trial.

**V. SECOND CAUSE OF ACTION: DISABILITY DISCRIMINATION AND VETERAN
STATUS DISCRIMINATION UNDER RCW 49.60 ET SEQ. (WASHINGTON LAW
AGAINST DISCRIMINATION)**

5.1 Plaintiff hereby incorporates and re-alleges all allegations as previously stated.

5.2 Defendants knew or should have known that Plaintiff suffers from a disability related to his military service including but not limited to depression and PTSD.

5.3 Plaintiff's supervisor discriminated against him in assessing his performance based on her biases, prejudices and feelings about his disabilities related to his military service including but not limited to depression and PTSD.

5.4 Defendants discriminated against the Plaintiff by creating a hostile work environment based on biases, prejudices and feelings about his disabilities related to his military service including but not limited to depression and PTSD.

5.5 The defendant also took tangible employment actions, including modification of the plaintiff's duties as set forth above related to his military service including but not limited to depression and PTSD.

5.6 Defendants failed to engage in the interactive process required by the American's with Disabilities Act and failed to provide the reasonable accommodations requested by the plaintiff.

5.7 Defendant's acts and omissions constitute disability discrimination under RCW 49.60 and other state statutes, regulations and case law.

5.8 As a direct and proximate result of Defendants' disability discrimination Plaintiff has suffered damages in an amount to be proven at trial.

VI. THIRD CAUSE OF ACTION: RETALIATION UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED 42 USC 2000e, ET SEQ. AND THE AMERICANS WITH DISABILITIES ACT 42 USC 12132, ET SEQ.

6.1 Plaintiff hereby incorporates and re-alleges by reference all allegations as previously stated.

6.2 When plaintiff reported concerns of discrimination to human resources, his manager began to treat him in a hostile manner and began to change the conditions of his employment.

6.3 When Shell failed to address the plaintiff's concerns he filed a charge of discrimination with the EEOC.

6.4 As a direct and proximate result of Shell becoming aware that Mr. Filby had filed a Charge of Discrimination with the EEOC, his employment was terminated.

6.5 Plaintiff's termination of employment because of his Charge of Discrimination to the EEOC constitutes unlawful retaliation in violation of the Civil Rights Act of 1964 as amended 42 USC 2000e, *et seq.* and under other federal statutes, regulations and case law.

VII. FOURTH CAUSE OF ACTION: RETALIATION UNDER RCW 49.60 ET SEQ. (WASHINGTON LAW AGAINST DISCRIMINATION)

7.1 Plaintiff hereby incorporates and re-alleges by reference all allegations as previously stated.

7.2 When plaintiff reported concerns of discrimination to human resources, his manager began to treat him in a hostile manner and began to change the conditions of his employment.

1 7.3 When Shell failed to address the plaintiff's concerns, he filed a charge of
2 discrimination with the EEOC.

3 7.4 As a direct and proximate result of Shell becoming aware that Mr. Filby
4 had filed a Charge of Discrimination with the EEOC, his employment was terminated.

5 7.5 Plaintiff's termination of employment because of his Charge of
6 Discrimination to the EEOC constitutes unlawful retaliation in violation of RCW 49.60, and
7 under other state statutes, regulations and case law.
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9 **VIII. FIFTH CAUSE OF ACTION: BREACH OF CONTRACT**

10 8.1 Plaintiff hereby incorporates and re-alleges by reference all allegations as
11 previously stated.

12 8.2 Defendant Shell provides its employees with a Positive Performance
13 Program ("PPP") designed to help employees meet performance expectations.
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15 8.3 This program includes a process of progressive discipline.

16 8.4 Mr. Filby considered the PPP to be an important part of his employment
17 arrangement with Shell, and assumed that it would be used prior to any decision to
18 terminate his employment.

19 8.5 Shell never used the PPP, nor did it ever offer Mr. Filby the opportunity to
20 use to the PPP prior to his termination.
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22 8.6 Mr. Filby reasonably relied on the express and implied promises of the
23 PPP so that his employment would not be terminated unless or until participation in the
24 PPP was unsuccessful in allowing him to continue his employment with Shell.
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IX. JURY TRIAL

9.1 Plaintiff hereby requests and demands a jury trial.

X. PRAYER FOR RELIEF

WHEREFORE, having set forth his complaint, Plaintiff prays for judgment as follows:

1. For judgment against the Defendants, jointly and severally for compensatory damages and for all losses: past, present, and future.

2. For an award of prejudgment interest, and for an enhanced award for federal tax consequences to make Plaintiff whole.

3. For punitive damages to be assessed against Defendants as provided by law.

4. That Plaintiff be awarded all costs and reasonable attorneys' fees incurred for this action as allowed under state and federal law.

5. That Plaintiff be awarded such other and further relief as this Court may deem just and proper.

DATED this 13th day of December, 2018.

BURI FUNSTON MUMFORD FURLONG, PLLC

_____/S/_____
TOM MUMFORD, WSBA #28652
Attorney for Plaintiff

PLAINTIFF VERIFICATION

The undersigned declares under penalty of perjury under the laws of the State of Washington that the statements made in the foregoing **Complaint** are true and correct to the best of his knowledge and belief.

DATED this 13th day of December, 2018.

/S/
ADAM FILBY, Plaintiff